

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

- - -

Harry G. Beyoglides, Jr.,
Special Administrator of the
Estate of Robert Andrew
Richardson, Sr., Deceased,
Plaintiff,

vs.

Case No. 3:14-CV-00158

Phil Plummer/Montgomery County
Sheriff, et al.,
Defendants

- - -

DEPOSITION OF JOHN MICHAEL CLYMER
the Defendant herein, called by the Plaintiff under the
applicable Rules of Civil Procedure, taken before me,
Whitney Layne, a Notary Public for the State of Ohio, at
the law firm of Dinkler & Pregon, 5335 Far Hills Avenue,
Suite 117, Dayton, Ohio 45429 on November 18, 2015 at
3:00 p.m.

LAYNE & ASSOCIATES
6723 COOPERSTONE DRIVE
DUBLIN, OHIO 43017
614-309-1669

<p>1 APPEARANCES</p> <p>2</p> <p>3 NICHOLAS DICELLO, ESQUIRE</p> <p>4 SPANGENBERG, SHIBLEY & LIBER</p> <p>5 1001 Lakeside Avenue</p> <p>6 Suite 1700</p> <p>7 Cleveland, Ohio 44114</p> <p>8 on behalf of the Plaintiff</p> <p>9</p> <p>10 JAMEY PREGON, ESQUIRE</p> <p>11 DINKLER & PREGON</p> <p>12 5335 Far Hills Avenue</p> <p>13 Suite 123</p> <p>14 Dayton, Ohio 45429</p> <p>15 on behalf of the Sheriff</p> <p>16 Defendants</p> <p>17</p> <p>18 CARRIE STARTS, ESQUIRE</p> <p>19 REMINGER CO., LPA</p> <p>20 525 Vine Street</p> <p>21 Suite 1700</p> <p>22 Cincinnati, Ohio 45202</p> <p>23 on behalf of the Defendants</p> <p>24 NaphCare, Inc., Nurse Felicia Foster,</p> <p>Nurse Jon Boehringer, Nurse Krisandra</p> <p>Miles, Medic Steven Stockhauser,</p> <p>and Brenda Garrett Ellis, M.D.</p> <p>MARY MONTGOMERY, ESQUIRE</p> <p>TODD AHEARN, ESQUIRE</p> <p>ASSISTANT PROSECUTING ATTORNEY</p> <p>301 West Third Street</p> <p>4th Floor</p> <p>Dayton, Ohio 45422</p> <p>on behalf of the Defendant</p> <p>Montgomery County Sheriff's</p> <p>Office</p> <p>Page 2</p>	<p>1 EXAMINATION INDEX</p> <p>2</p> <p>3 JOHN MICHAEL CLYMER</p> <p>4 BY MR. DICELLO.....Page 5</p> <p>5</p> <p>6 EXHIBIT INDEX</p> <p>7 Exhibit Marked</p> <p>8 2.....Page 58</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>Page 4</p>
<p>1 November 18, 2015</p> <p>2 Wednesday Session</p> <p>3 3:00 p.m.</p> <p>4 - - -</p> <p>5 STIPULATIONS</p> <p>6</p> <p>7 It is stipulated by and among counsel for the</p> <p>8 respective parties that the deposition of JOHN MICHAEL</p> <p>9 CLYMER, the Defendant herein, called by the Plaintiff</p> <p>10 under the applicable Rules of Civil Procedure, may be</p> <p>11 taken at this time by the notary Whitney Layne; that said</p> <p>12 deposition may be reduced to writing in stenotypy by the</p> <p>13 notary, whose notes thereafter may be transcribed out of</p> <p>14 the presence of the witness; and that the proof of the</p> <p>15 official character and qualification of the notary is</p> <p>16 waived.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>Page 3</p>	<p>1 JOHN MICHAEL CLYMER</p> <p>2 Being first duly sworn, as hereinafter</p> <p>3 certified, deposes and says as follows:</p> <p>4 CROSS-EXAMINATION</p> <p>5 BY MR. DICELLO:</p> <p>6 Q Can you please state your name?</p> <p>7 A Sure. It's John M. Clymer, C-L-Y-M-E-R.</p> <p>8 Q How do you prefer I address you? I understand</p> <p>9 you're retired now?</p> <p>10 A I am. I am.</p> <p>11 Q I've been calling --</p> <p>12 A Mike is fine.</p> <p>13 Q Are you sure?</p> <p>14 A Yeah.</p> <p>15 Q I've been calling everybody Detective,</p> <p>16 Sergeant.</p> <p>17 A Those days are so far gone.</p> <p>18 Q All right, good. Well, you can call me Nick,</p> <p>19 Mike.</p> <p>20 A Okay.</p> <p>21 Q Do you understand you're here to have your</p> <p>22 deposition taken?</p> <p>23 A Yes.</p> <p>24 Q Ever been deposed before?</p> <p>Page 5</p>

<p>1 A No.</p> <p>2 Q You understand you're here to have your</p> <p>3 deposition taken in connection with a lawsuit that's been</p> <p>4 filed against some folks at the county sheriff's</p> <p>5 department --</p> <p>6 A Uh-huh.</p> <p>7 Q -- as a result of the death of Robert</p> <p>8 Richardson back in 2012?</p> <p>9 A That is correct.</p> <p>10 Q I'm sure you figured out by now, but I'm the</p> <p>11 lawyer that represents the family and the representatives</p> <p>12 of the deceased, Robert Richardson, okay?</p> <p>13 A Yes.</p> <p>14 Q A couple ground rules that will help us make a</p> <p>15 clean record for the purposes of this deposition as we</p> <p>16 have to try to not that talk over one another. She can</p> <p>17 only take down one person at a time, okay?</p> <p>18 A Yes.</p> <p>19 Q You've done a nice job until now, but keep your</p> <p>20 voice up and give me your answers verbally with a yes, no,</p> <p>21 some kind of explanation, as opposed to a shrug, huh-uh or</p> <p>22 uh-huh, okay?</p> <p>23 A Yes.</p> <p>24 Q I don't want you to answer questions today that</p> <p style="text-align: right;">Page 6</p>	<p>1 going to be relying on the information you give;</p> <p>2 understood?</p> <p>3 A Yes.</p> <p>4 Q If at any point in time during this deposition</p> <p>5 you want to take a break, we can do that. Just let me</p> <p>6 know. I would ask that if a question is pending, answer</p> <p>7 the question first, Mike, and then say, "Hey, Nick, let's</p> <p>8 take a break." All right?</p> <p>9 A Okay.</p> <p>10 Q It's also not uncommon that something might jog</p> <p>11 your memory at some point today, and you may remember I</p> <p>12 answered that wrong, or you may remember I forgot to tell</p> <p>13 Nick about that. I want you to take the opportunity today</p> <p>14 to revisit any question I've asked or answer that you've</p> <p>15 given if that should happen, okay?</p> <p>16 A Okay.</p> <p>17 Q You told me you're currently retired from your</p> <p>18 employ at the Montgomery County Sheriff's Office; true?</p> <p>19 A Yes.</p> <p>20 Q When did you retire, sir?</p> <p>21 A February 28th of '15. This year.</p> <p>22 Q How many years did you have in before you</p> <p>23 retired?</p> <p>24 A Thirty.</p> <p style="text-align: right;">Page 8</p>
<p>1 you don't understand. That's very important, okay?</p> <p>2 A Okay.</p> <p>3 Q So if I ask a question that you don't</p> <p>4 understand, and I may do that, I do it from time to time,</p> <p>5 I want you to let me know.</p> <p>6 A Yes.</p> <p>7 Q If you do answer a question that I've asked,</p> <p>8 I'm going to assume that you understood it. Is that fair?</p> <p>9 A Yes.</p> <p>10 Q You understand you're under oath today?</p> <p>11 A Yes.</p> <p>12 Q Over the course of your career, have you had</p> <p>13 occasion to testify in courtrooms?</p> <p>14 A Yes.</p> <p>15 Q The oath that you're under today is the same</p> <p>16 type of oath that you take when you're in front of a judge</p> <p>17 and jury in a court of law. Do you understand that?</p> <p>18 A I understand.</p> <p>19 Q Do you understand that I'm going to be relying</p> <p>20 on the accuracy of the answers you give me today in</p> <p>21 connection with this lawsuit?</p> <p>22 A Yes.</p> <p>23 Q You understand this is my only chance to ask</p> <p>24 you questions under oath before trial, so that's why I'm</p> <p style="text-align: right;">Page 7</p>	<p>1 Q I saw that your officer number was a lot lower</p> <p>2 than a lot of the other numbers I saw.</p> <p>3 A Yes.</p> <p>4 Q Officer number 98?</p> <p>5 A Yes.</p> <p>6 Q Some of these officer numbers in here are over</p> <p>7 1100.</p> <p>8 A Yes.</p> <p>9 Q So over the course of your career, I want to</p> <p>10 get some understanding, Mike, as to the different</p> <p>11 positions you've held within the sheriff's office.</p> <p>12 A Okay.</p> <p>13 Q So can you take me through that however you</p> <p>14 think is best to walk me through that?</p> <p>15 A Okay. Whether this matters are not, I worked</p> <p>16 at a smaller department prior to going to the sheriff's</p> <p>17 office. I worked there eight and a half years. During</p> <p>18 that period of time, I worked as a patrolman. It was a</p> <p>19 small community. I was also promoted to sergeant for six</p> <p>20 years. I served as interim chief for a period of about</p> <p>21 eight months.</p> <p>22 Q What community is this?</p> <p>23 A New Lebanon.</p> <p>24 Q Ohio?</p> <p style="text-align: right;">Page 9</p>

<p>1 A Yes. It's in Montgomery County west of Dayton.</p> <p>2 Q This was a city police force?</p> <p>3 A Village. It's a town of about 5,500.</p> <p>4 Q Okay.</p> <p>5 A In 1985, I joined the sheriff's office,</p> <p>6 February. During that, my first three years until 1998 I</p> <p>7 worked as a deputy sheriff in the Montgomery County Jail.</p> <p>8 Prior to that time, the sheriff's office did not have</p> <p>9 corrections officers. They had sworn deputies working the</p> <p>10 jail.</p> <p>11 Q Okay.</p> <p>12 A And in 1988, I worked road patrol for several</p> <p>13 years, I then went back into the jail and worked as a</p> <p>14 courts officer working trials, security, so on and so</p> <p>15 forth during that period of time. I also, at the end of</p> <p>16 that, I can't remember, it was like '91, '92, '93,</p> <p>17 somewhere in that neighborhood, I went back to road patrol</p> <p>18 until March of 1997. March of 1997, I went into the</p> <p>19 Special Investigations Section, Detective Section. I</p> <p>20 worked in there for 18 years, variety of jobs. I</p> <p>21 investigated auto thefts for numerous years, I then</p> <p>22 eventually, for about 14 years, investigated violent</p> <p>23 crimes, which included the homicides, felonious assaults,</p> <p>24 adult rapes. And then towards the end, along with doing</p> <p style="text-align: right;">Page 10</p>	<p>1 in the jail. We would go into the transport staging area,</p> <p>2 pick up prisoners, take them to a docket call. We would</p> <p>3 also work trials as far as a security, taking someone and</p> <p>4 handling that. But as far as actually working day-to-day,</p> <p>5 it would probably -- I'm trying to think.</p> <p>6 Q Mid to late eighties?</p> <p>7 A Yeah, late eighties. '88. March of '88, I</p> <p>8 think.</p> <p>9 Q Was the jail facility at the same location it</p> <p>10 is now?</p> <p>11 A Part of it.</p> <p>12 Q The old part?</p> <p>13 A And that's where I worked. I worked in more</p> <p>14 the linear style jail. We now have the pod system, which</p> <p>15 I'm familiar with, because I would go in -- at least I'm</p> <p>16 familiar with the layout, because we would go in, there's</p> <p>17 interview rooms inside the jail to interview suspects</p> <p>18 during my time as a detective, and I knew how to get</p> <p>19 around in the jail. But as far as actually working</p> <p>20 pulling prisoners, feeding, things of that nature, I</p> <p>21 never -- you know, I never worked any of that part, never</p> <p>22 worked any of the camera systems, none of the alarm</p> <p>23 systems, nothing -- nothing along that line.</p> <p>24 Q During your 18 years as a detective in the</p> <p style="text-align: right;">Page 12</p>
<p>1 that, I did some of the special investigations, high level</p> <p>2 fraud, voter fraud, some special investigations that the</p> <p>3 sheriff needed done only because I was older, I guess.</p> <p>4 Q Okay.</p> <p>5 A I'm not sure. But so I did that for -- I was</p> <p>6 in the Investigation Section for 18 years.</p> <p>7 Q I think you said you were in the Special</p> <p>8 Investigation Section for 18 years?</p> <p>9 A Yes.</p> <p>10 Q Is that the SIU or is that different?</p> <p>11 A Well, we have -- we have a Special</p> <p>12 Investigation Section that handles the violent crimes, the</p> <p>13 gun crimes. We also have district detectives that are</p> <p>14 assigned to our three districts that handle burglaries,</p> <p>15 domestic violence crimes. I don't know how they came up</p> <p>16 with the name, but it's always been Special</p> <p>17 Investigations, and then they moved people out to the</p> <p>18 districts based on the need.</p> <p>19 Q So when was the last time that you worked</p> <p>20 day-to-day inside the jail? Was that in the late eighties</p> <p>21 --</p> <p>22 A Yes. I --</p> <p>23 Q -- as a courts officer?</p> <p>24 A Well, even as a courts officer, I didn't work</p> <p style="text-align: right;">Page 11</p>	<p>1 Special Investigations Division, you told me some of the</p> <p>2 things you investigated. I'm sure you investigated a lot</p> <p>3 of different situations. Can you give me an idea of how</p> <p>4 often you investigated incidents or occurrences that</p> <p>5 occurred inside the jail while you were a detective with</p> <p>6 Special Investigations?</p> <p>7 A And it would be a variety of things. Whether</p> <p>8 it would be a felonious assault, inmate on inmate assault,</p> <p>9 inmate on corrections officers or staff, rape, certain</p> <p>10 amount of -- it's not a -- it's assault, it's harassment</p> <p>11 by inmate where inmates will throw urine and feces and</p> <p>12 spit on corrections officers, I would handle those kind of</p> <p>13 cases. And the main reason we did, not just me, but in</p> <p>14 Special, is because we were not in a contract area. We</p> <p>15 were downtown, my office was directly across from the</p> <p>16 jail, and the sheriff, we had five detectives at that time</p> <p>17 assigned to Special. We would handle any of the jail</p> <p>18 issues.</p> <p>19 Q Okay.</p> <p>20 A We also would handle any other issues with like</p> <p>21 the Board of Elections, a threatening of a Common Pleas</p> <p>22 Court judge, things that the county would need a detective</p> <p>23 to investigate. The other district detectives would take</p> <p>24 care of investigating things in that district such as the</p> <p style="text-align: right;">Page 13</p>

<p>1 Harrison, which is North Dayton, they would handle that</p> <p>2 district, and handle the auto thefts and things of that</p> <p>3 nature.</p> <p>4 Q So how often, could you put a number on it, how</p> <p>5 many investigations you've --</p> <p>6 A A year?</p> <p>7 Q A year that occurred, for something to happen</p> <p>8 inside the jail.</p> <p>9 A Me personally, probably five to seven, eight.</p> <p>10 Q How many investigations, excluding the one that</p> <p>11 we're going to talk about today, have you investigated</p> <p>12 where there was a death that occurred inside the jail?</p> <p>13 A Probably maybe ten.</p> <p>14 Q How many of those involve situations where it</p> <p>15 was determined, it was never thought to be inmate on</p> <p>16 inmate?</p> <p>17 A I never had a homicide investigation, which --</p> <p>18 which if it's an inmate on inmate and someone dies --</p> <p>19 Q That's a homicide investigation?</p> <p>20 A -- that would be a homicide investigation,</p> <p>21 because it's not a natural death.</p> <p>22 Q But if somebody dies at the hands of a</p> <p>23 corrections officer, it's not a homicide investigation?</p> <p>24 A It's based on the -- of how it's ruled and what</p> <p style="text-align: right;">Page 14</p>	<p>1 had deaths.</p> <p>2 Q The Robert Richardson investigation, and I'll</p> <p>3 ask your specific involvement in a minute, but was that a</p> <p>4 homicide investigation?</p> <p>5 A It was not.</p> <p>6 Q Why not?</p> <p>7 A It has to do with the manner and the way the</p> <p>8 death was ruled. There was no evidence that was found,</p> <p>9 there was no indication from Dr. Casto, who did the</p> <p>10 autopsy, that there was any trauma to the body, that there</p> <p>11 was -- there was no cause created by the corrections</p> <p>12 officers that were involved in that that they did anything</p> <p>13 improper that caused his death. The death of</p> <p>14 Mr. Richardson was determined by Dr. Casto to be a</p> <p>15 cardiac, based on the post-op report. And I attended the</p> <p>16 autopsy.</p> <p>17 Q I understand you did. While we're kind of</p> <p>18 talking about this, who made the determinations, some of</p> <p>19 the things you just said, that nothing the officers did</p> <p>20 brought about Mr. Richardson's death?</p> <p>21 A It was based on the entire encompassing the</p> <p>22 whole investigation.</p> <p>23 Q Okay.</p> <p>24 A You know, based on statements that we had,</p> <p style="text-align: right;">Page 16</p>
<p>1 the evidence shows.</p> <p>2 Q So have you investigated any homicides at the</p> <p>3 Montgomery County Jail?</p> <p>4 A No.</p> <p>5 Q But you've investigated ten deaths?</p> <p>6 A Yes.</p> <p>7 Q How many of those --</p> <p>8 A That includes suicides.</p> <p>9 Q How many of those were suicides?</p> <p>10 A Probably at least half.</p> <p>11 Q So now we're working our way down. We have</p> <p>12 about five or six, I'm not holding you to specific</p> <p>13 numbers.</p> <p>14 A Correct.</p> <p>15 Q But about five or six deaths that were not</p> <p>16 suicides. Why weren't those considered to be homicide</p> <p>17 investigations?</p> <p>18 A Suicides?</p> <p>19 Q No, the non-suicide death investigations at the</p> <p>20 jail.</p> <p>21 A We would have people that just had heart</p> <p>22 attacks and would die in their cell, older age. It wasn't</p> <p>23 as a result of trauma. There wasn't anything that could</p> <p>24 not be explained other than a medical condition that we</p> <p style="text-align: right;">Page 15</p>	<p>1 interviews of inmates, interviews of Marcus Maxwell, who</p> <p>2 was his --</p> <p>3 Q Cellmate?</p> <p>4 A -- cellmate. Based on Dr. Casto's examination</p> <p>5 of the body, which is -- which is a large part of the</p> <p>6 investigation. And to bring forward criminal charges, the</p> <p>7 Criminal Division of the Montgomery County Prosecutor's</p> <p>8 Office, the ruling would have to be some sort of a</p> <p>9 criminal act, just not a death. And that inmates were --</p> <p>10 or corrections officers were there is not enough in my</p> <p>11 years of experience in dealing with the prosecutor's</p> <p>12 office that would show that anybody caused his death.</p> <p>13 Q Do you know what the manner of death has been</p> <p>14 ruled to be in Mr. Richardson's case?</p> <p>15 A Manner of death? It was -- It was ruled</p> <p>16 natural with -- it was a hypertension cardiac event. I</p> <p>17 know that one of his arteries, the left descending, I</p> <p>18 believe it was, was 75 percent blockage. Mr. Richardson,</p> <p>19 based on the information that I received during the early</p> <p>20 part of my investigation, was he had hypertension, and he</p> <p>21 also had a blood pressure issue, which he was not being</p> <p>22 treated for at the jail. I don't know why. I can't</p> <p>23 answer that. I'm not a -- I'm not the medic. The medical</p> <p>24 part of that. But I know he wasn't under any kind of</p> <p style="text-align: right;">Page 17</p>

<p>1 medication at that time. So it was ruled by Dr. Casto as</p> <p>2 a natural death --</p> <p>3 Q Can you stop you there? Because it wasn't. Do</p> <p>4 you know that? Am I the person informing you now that</p> <p>5 Dr. Casto did not rule this as a natural death?</p> <p>6 MR. PREGON: Objection.</p> <p>7 Go ahead.</p> <p>8 A Can I look at my report based on what I have?</p> <p>9 I don't have the autopsy report in front of me. Do you?</p> <p>10 BY MR. DICELLO:</p> <p>11 Q I'll represent to you that the autopsy rules</p> <p>12 this as an accidental death.</p> <p>13 A Okay. Accidental, okay.</p> <p>14 Q So --</p> <p>15 A Then I'm mistaken.</p> <p>16 Q Fair enough. And I know you haven't looked at</p> <p>17 this stuff in awhile. But at the time you issued your</p> <p>18 report, you were under the impression that this was ruled</p> <p>19 a natural death; correct?</p> <p>20 A No, I probably am mistaken. It may say</p> <p>21 natural, I'm not sure. But I thought I wrote off of --</p> <p>22 because I got a copy of Dr. Casto's post-op report.</p> <p>23 Q And I'm sure you've -- you've probably reviewed</p> <p>24 more autopsy reports than all of us in this room combined,</p> <p style="text-align: right;">Page 18</p>	<p>1 I believe goes to manner of death. And in the report, I</p> <p>2 believe Dr. Casto wrote that that is caused by his cardiac</p> <p>3 condition.</p> <p>4 Q Is it your understanding, then, that his</p> <p>5 atherosclerotic heart disease was accidental? That's not</p> <p>6 how it works, is it?</p> <p>7 A Well, he had that condition.</p> <p>8 Q Right.</p> <p>9 A Which --</p> <p>10 Q If he died from atherosclerotic heart disease</p> <p>11 like a lot of people do, that would be a natural cause of</p> <p>12 death; correct?</p> <p>13 A Right. But that goes to manner, if I recall</p> <p>14 correctly, in the report.</p> <p>15 Q And the manner of death was accidental.</p> <p>16 A Okay. Then a contributing factor was the heart</p> <p>17 condition along with, I believe there was also a high</p> <p>18 level of THC in his system as well.</p> <p>19 Q Correct.</p> <p>20 A Okay.</p> <p>21 Q I'm not trying to be difficult here, I'm just</p> <p>22 trying to get an understanding from the investigator's</p> <p>23 standpoint what caused this man's death. Do you know?</p> <p>24 A I would say not based on your -- based on where</p> <p style="text-align: right;">Page 20</p>
<p>1 you've probably reviewed a number of them in connection</p> <p>2 with your job.</p> <p>3 A I have.</p> <p>4 Q You understand the difference between natural,</p> <p>5 accidental, and homicide; correct?</p> <p>6 A Yes.</p> <p>7 Q And accidental death involves death brought</p> <p>8 about by the actions of people?</p> <p>9 A Okay.</p> <p>10 Q Understood?</p> <p>11 A Okay. I understand.</p> <p>12 Q So based on your investigation, who were the</p> <p>13 people that caused Mr. Richardson's death?</p> <p>14 A I can't answer that. I know who was there.</p> <p>15 Q But you are charged with investigating this;</p> <p>16 true?</p> <p>17 A Correct.</p> <p>18 Q And so the manner of death indicates that there</p> <p>19 were people involved in causing his death, and you don't</p> <p>20 know who those people are?</p> <p>21 A Well, the corrections officers were there. I</p> <p>22 mean, the officers that were involved. Whether they</p> <p>23 caused his death or his health condition and his -- the</p> <p>24 way he was, was a contributing factor to his death, which</p> <p style="text-align: right;">Page 19</p>	<p>1 you're going then.</p> <p>2 Q This is news to you?</p> <p>3 A Well, it's not news to what the report says and</p> <p>4 how he died, okay? As far as who caused his death? There</p> <p>5 was no evidence to show that anybody -- that he -- the</p> <p>6 idea that Mr. Richardson was in the county -- he was</p> <p>7 trying to be controlled based on the information that I</p> <p>8 have.</p> <p>9 Q Okay.</p> <p>10 A Based on what I reviewed in the video, he had</p> <p>11 some sort of a medical event in his cell, corrections</p> <p>12 officers responded, along with medical personnel, and in</p> <p>13 trying to control the situation to give him care he had a</p> <p>14 cardiac -- he stopped breathing, he had some sort of a</p> <p>15 cardiac event.</p> <p>16 Q Okay.</p> <p>17 A If I recall what Dr. Casto wrote.</p> <p>18 Q Is it your understanding, then, that the</p> <p>19 cardiac event he had was caused by or that part of the</p> <p>20 contributing factor of causing that cardiac event was the</p> <p>21 actions of the corrections officers?</p> <p>22 MR. PREGON: Objection.</p> <p>23 Go ahead.</p> <p>24 A I can't tell you that.</p> <p style="text-align: right;">Page 21</p>

<p>1 BY MR. DICELLO:</p> <p>2 Q Okay.</p> <p>3 A I can't answer that question.</p> <p>4 Q All right. That would be important to know for</p> <p>5 the folks that are making decisions about whether to</p> <p>6 pursue criminal charges; correct?</p> <p>7 A If I knew that or if they knew that? The case</p> <p>8 was not presented to the prosecutor's office.</p> <p>9 Q My question is: Knowing whether or not the</p> <p>10 conduct of the corrections officers contributed to causing</p> <p>11 Mr. Richardson's death, which I think you've told us you</p> <p>12 don't know the answer to that?</p> <p>13 A I don't.</p> <p>14 Q Do we agree that the answer to that question is</p> <p>15 important to know to determine whether or not criminal</p> <p>16 charges are pursued?</p> <p>17 A Based on what I observed back in 2012 from the</p> <p>18 video, based on the reports that I read, based on the</p> <p>19 information concerning the statements from the inmates,</p> <p>20 there was nothing that I observed, read, or saw that the</p> <p>21 officers did anything out of line other than trying to</p> <p>22 control an inmate in the county jail where we are required</p> <p>23 to take care of the safety of the entire population and</p> <p>24 keep control within the facility, that there was nothing</p> <p style="text-align: right;">Page 22</p>	<p>1 MR. PREGON: Objection.</p> <p>2 BY MR. DICELLO:</p> <p>3 Q Did Mr. Richardson accidentally cause his own</p> <p>4 death?</p> <p>5 MR. PREGON: Objection.</p> <p>6 A But we had a medical condition that he was, as</p> <p>7 well.</p> <p>8 BY MR. DICELLO:</p> <p>9 Q I understand. I'm trying to understand --</p> <p>10 What's your understanding of why this was ruled an</p> <p>11 accident if it was just a medical condition that caused</p> <p>12 his death?</p> <p>13 A I would believe an -- I can't answer that</p> <p>14 question.</p> <p>15 Q Okay.</p> <p>16 A But I believe Dr. Casto would be the doctor --</p> <p>17 be the individual. He has the medical background of why</p> <p>18 he made the ruling. He also should have been made, and I</p> <p>19 can't say for sure sitting here today, all the reports and</p> <p>20 all the information concerning the investigation.</p> <p>21 Q I mean, if somebody kills somebody for</p> <p>22 accidentally running a red light, that's ruled an</p> <p>23 accidental death?</p> <p>24 MR. PREGON: Objection.</p> <p style="text-align: right;">Page 24</p>
<p>1 else there.</p> <p>2 Q I appreciate that. And I know you have a lot</p> <p>3 of years of experience, and I'm sure you have to make</p> <p>4 certain judgment calls in connection with your</p> <p>5 investigation. But, Mike, don't we agree that that's not</p> <p>6 really for you to make that decision as to whether or not</p> <p>7 the corrections officers caused Mr. Richardson's death and</p> <p>8 should be prosecuted for it, is it?</p> <p>9 A My call? It is my call along with my</p> <p>10 supervisors to determine whether or not something goes</p> <p>11 forward that officers are in violation or caused the death</p> <p>12 of him. And there was nothing that was observed, seen,</p> <p>13 investigated that showed that, that indicated that.</p> <p>14 Q I appreciate that. And that was your decision</p> <p>15 at the time. But we have -- you have admitted to me today</p> <p>16 here that based on some of the information I'm explaining</p> <p>17 to you about the autopsy, you don't know whose actions</p> <p>18 caused Mr. Richardson's death; correct?</p> <p>19 MR. PREGON: Objection.</p> <p>20 Go ahead.</p> <p>21 A Nor do we know if any of their actions caused</p> <p>22 his death.</p> <p>23 BY MR. DICELLO:</p> <p>24 Q So why was it ruled an accident?</p> <p style="text-align: right;">Page 23</p>	<p>1 Go ahead.</p> <p>2 BY MR. DICELLO:</p> <p>3 Q Right.</p> <p>4 A There's a violation of law, they ran a red</p> <p>5 light.</p> <p>6 Q Okay.</p> <p>7 A That is a clear violation. We have a witness</p> <p>8 that tells us that car went through the red light or we</p> <p>9 have photographic, whatever, we have to have -- we have</p> <p>10 clear. Based on the scenario you gave me, we have a</p> <p>11 violation of law.</p> <p>12 Q Okay.</p> <p>13 A So therefore, due to their negligence, they</p> <p>14 caused the accident. Someone died as a result of that</p> <p>15 individual violating the law, whether it be a traffic law</p> <p>16 or a, you know, a criminal felony law, caused the death in</p> <p>17 a traffic accident.</p> <p>18 Q So your understanding of this situation is some</p> <p>19 people caused Mr. Richardson's death but it was accidental</p> <p>20 and nobody did anything wrong?</p> <p>21 A I didn't say that they --</p> <p>22 MR. PREGON: Objection.</p> <p>23 A I didn't say that no one -- I'm sorry. Can you</p> <p>24 restate that question?</p> <p style="text-align: right;">Page 25</p>

1 BY MR. DICELLO:
2 Q Yeah.
3 A Yeah.
4 Q Because you and I seem to know what the meaning
5 of accidental is in a manner of death ruling; correct?
6 A Intent.
7 Q Is that how you interpret it?
8 A An accident is -- If you intend to do
9 something, it's not an accident. It's not an accident.
10 Q But an accident means that people's actions
11 caused the death; correct?
12 MR. PREGON: Objection.
13 Go ahead.
14 BY MR. DICELLO:
15 Q Whether you fall out of a tree, whether you --
16 somebody drops something and hits you on the head, I mean,
17 that's -- it's not a natural death, it's an accidental
18 death. That means people were involved in bringing about
19 the death. Is that your understanding, or is it not?
20 A Well, it can be ruled -- I -- I guess it's like
21 -- My thought, and again, when looking at the -- an
22 accident is an accident. No one intends on killing
23 someone in a car accident or in having an accident and
24 killing someone. But if you run a red light.

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1 Q Go ahead, I'm still listening. Sorry.
2 A The intent -- Okay. I'm -- The intent has to
3 be there when you're looking at -- or a negligence in your
4 actions caused the injury. And based on the information
5 that we had at the time, nothing showed that the officers
6 were negligent in their duties.
7 Q Okay. Bear with me one second here. Sorry.
8 Try to bring all the documents with you, but you always
9 forget something.
10 The CDC issues a manual for medical examiners.
11 In fact, it's the National Association of Medical
12 Examiners that defines these terms.
13 A Okay.
14 Q Okay? Natural is defined as "due solely or
15 nearly totally to disease and/or the aging process." Is
16 that consistent with your understanding of what natural is
17 as a ruling of a manner of death?
18 A I guess. I mean, I can tell you I've never
19 read that or seen that.
20 Q And then there's accident. "There is little or
21 no evidence that the injury or poisoning occurred with
22 intent to harm or cause death. In essence, the fatal
23 outcome was unintentional." Is that the concept you were
24 kind of trying to say?

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1 MR. PREGON: Objection.
2 Go ahead.
3 A You were asking whether or not I am saying --
4 BY MR. DICELLO:
5 Q Let me ask you: When you're reviewing manners
6 of deaths in -- because I think what you told me is a big
7 part of the investigation, in terms of which direction
8 it's going to head, is based on the coroner's finding as
9 to the manner of death; correct? That's what you said
10 earlier?
11 A Well, absolutely. It's very important.
12 Q So the coroner can come up with natural,
13 accident, suicide, homicide, or could not be determined;
14 right?
15 A Undetermined, correct.
16 Q Right? So in this case it wasn't natural, it
17 wasn't due solely or nearly totally to disease; did you
18 understand that?
19 A Correct.
20 Q So there was something other than just his
21 heart disease that caused his death; correct?
22 MR. PREGON: Objection.
23 A I don't know that. I mean -- I guess you have
24 to look at what the doctor said.

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1 BY MR. DICELLO:
2 Q And I'll have a chance to ask the doctor these
3 questions, but I'm asking you, and you were in the room
4 when the autopsy was performed, and you spoke with the
5 coroner and reviewed his results in connection with your
6 investigation. So I'm really interested in what your
7 understanding is about the coroner's ruling here. And we
8 know the coroner didn't rule it as natural. And the
9 definition for natural is due solely or nearly totally to
10 disease or the aging process. We know he didn't die from
11 old age?
12 A That is correct.
13 Q Okay.
14 A We know that.
15 Q And because it wasn't ruled natural, we know
16 Mr. Richardson didn't die solely or near little totally as
17 a result of his heart disease; correct?
18 MR. PREGON: Objection.
19 BY MR. DICELLO:
20 Q Because that's what the definition is. I'm
21 showing you my phone.
22 A I understand what you're saying. What I'm
23 saying is what his report -- what his report said was it
24 was a cardiac event that caused his death.

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<p>1 Q What caused the cardiac event?</p> <p>2 A We don't know that.</p> <p>3 Q Well, we know it wasn't due to natural causes,</p> <p>4 don't we?</p> <p>5 A We also know due to the --</p> <p>6 Q Can you answer my question?</p> <p>7 A I'm sorry.</p> <p>8 Q We know that it wasn't due to natural causes;</p> <p>9 correct?</p> <p>10 MR. PREGON: Objection.</p> <p>11 A Well, he had a disease. He had a cardiac</p> <p>12 disease.</p> <p>13 BY MR. DICELLO:</p> <p>14 Q Correct.</p> <p>15 A He did have that. I understand that.</p> <p>16 Q And if he died from his cardiac disease, it</p> <p>17 would be ruled a natural death?</p> <p>18 A That is correct.</p> <p>19 Q But it wasn't ruled a natural death, was it?</p> <p>20 A That's correct.</p> <p>21 Q So it wasn't just his cardiac disease that</p> <p>22 caused Mr. Richardson's death, was it?</p> <p>23 A And again, it says, based on my report, and</p> <p>24 what I recall what was in my report, was it was a sudden</p> <p style="text-align: right;">Page 30</p>	<p>1 not reviewed.</p> <p>2 Q And I appreciate that. And I know that's the</p> <p>3 sum and substance of your investigation. You looked at a</p> <p>4 lot of different things, and I understand that. I'm</p> <p>5 really trying to focus on one component, and that is the</p> <p>6 manner in which Mr. Richardson died and how that affected</p> <p>7 your assessment of the situation, okay?</p> <p>8 A (Nods head.)</p> <p>9 Q And we've gone through the definitions, we know</p> <p>10 the coroner didn't rule this a natural death. I think</p> <p>11 you've agreed with me then we know this death didn't occur</p> <p>12 solely as a result of Mr. Richardson's heart disease or</p> <p>13 the medical condition that he was dealing with; correct?</p> <p>14 A I can't say that I know that, that I totally --</p> <p>15 I know that there was a medical something occurred, which</p> <p>16 caused him to go into seizure mode, which caused him to</p> <p>17 need medical attention, where eventually CPR was</p> <p>18 performed, or attempted to be performed.</p> <p>19 Q So based on the definition of accident that</p> <p>20 I've read to you --</p> <p>21 A Okay.</p> <p>22 Q -- what is the injury that occurred without</p> <p>23 intent to harm or cause death; do you know?</p> <p>24 A The injury that occurred?</p> <p style="text-align: right;">Page 32</p>
<p>1 cardiac event. And based on the information, we also had</p> <p>2 an event that occurred prior to the officers getting</p> <p>3 involved. Mr. Richardson went to the floor, and this is</p> <p>4 according to Mr. Maxwell, went to the floor, and went into</p> <p>5 what he used the term "seizure mode."</p> <p>6 Q Yeah.</p> <p>7 A Which based on the way Mr. Maxwell -- And I</p> <p>8 interviewed Mr. Maxwell. Based on the way -- There was</p> <p>9 some sort of a health, some sort of a medical condition</p> <p>10 that occurred which caused him to summons help where the</p> <p>11 corrections officers came, the medical staff came to</p> <p>12 assist Mr. Richardson.</p> <p>13 Q Yeah.</p> <p>14 A So it wasn't -- The event occurred prior to</p> <p>15 officers being involved --</p> <p>16 Q Okay.</p> <p>17 A -- with him.</p> <p>18 Q Okay.</p> <p>19 A Okay? So there was a medical condition going</p> <p>20 on. That is a factor in me determining my determination</p> <p>21 -- me determining, that doesn't even sound right.</p> <p>22 Q Yeah, it does.</p> <p>23 A The determination made through not only the</p> <p>24 evidence, the video, everything that we had, that it was</p> <p style="text-align: right;">Page 31</p>	<p>1 Q Yeah.</p> <p>2 A Well, what injury did he have?</p> <p>3 Q I'm asking you.</p> <p>4 A I don't know. He didn't have any injuries.</p> <p>5 Q Okay. So do you know why this was ruled an</p> <p>6 accident?</p> <p>7 A I can't say, no.</p> <p>8 Q Who contacted you to involve you in this</p> <p>9 investigation?</p> <p>10 A Sergeant Stevens.</p> <p>11 Q Was Sergeant Stevens your supervisor?</p> <p>12 A No, she -- she is assigned -- she's -- she may</p> <p>13 have been filling in that day for Sergeant Hutchinson.</p> <p>14 Sergeant Hutchinson at that time was my direct supervisor.</p> <p>15 Sergeant Stevens previously worked in the section and was</p> <p>16 my direct supervisor, but she works with another set of</p> <p>17 detectives, our Sexual Oriented Offenders Program, but --</p> <p>18 so therefore, she kind of fills in when Sergeant</p> <p>19 Hutchinson is not available or not working that day.</p> <p>20 Q When you arrived at the jail and got your</p> <p>21 bearings on March 19th, 2012, did you go about</p> <p>22 investigating this as a potential homicide?</p> <p>23 A That is one thing that we consider. We -- We</p> <p>24 had a death in the jail. It's investigated as a death.</p> <p style="text-align: right;">Page 33</p>

1 And at that point in time, we look at all of the evidence.
 2 So I guess at that point, to answer your question,
 3 everything is on the table.
 4 **Q So this should have been investigated as a**
 5 **potential homicide; true?**
 6 A I didn't say "should have." It's things that
 7 we consider. We have to see the entire -- it encompasses
 8 everything.
 9 **Q Okay.**
 10 A I didn't know what his medical condition was.
 11 I did not know whether or not there -- There -- We -- I
 12 know that there was no trauma. There was no blood. There
 13 was no sign of blunt force trauma. Nothing of that.
 14 **Q Yeah. Let me ask you this: As of May 19th of**
 15 **2012, did you know whether or not prone restraint is**
 16 **prohibited in the State of Ohio?**
 17 MR. PREGON: Objection.
 18 Go ahead.
 19 A No, I did not.
 20 BY MR. DICELLO:
 21 **Q Did you know whether or not the governor had**
 22 **issued an executive order banning prone restraint at the**
 23 **time you were investigating this death?**
 24 A No, I did not.

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1 MR. PREGON: Objection.
 2 BY MR. DICELLO:
 3 **Q Am I the person who is telling you that today**
 4 **for the first time?**
 5 A Yes.
 6 **Q Have you ever seen that executive order from**
 7 **the governor?**
 8 A No.
 9 **Q Do you know why you were unaware of an**
 10 **executive order that bans prone restraint at the time that**
 11 **you were summoned to investigate the death of someone who**
 12 **was restrained in a prone position?**
 13 MR. PREGON: Objection.
 14 A That would go to more of our policy and our
 15 training of our corrections officers, not into the
 16 criminal aspect. And I don't -- I would not, working with
 17 the ISU Section at that time. So the policies and
 18 procedures, no.
 19 BY MR. DICELLO:
 20 **Q One of the reasons I asked that question is**
 21 **because I was listening carefully earlier when you told me**
 22 **that, based on your review, none of the officers did**
 23 **anything that violated policy or procedure or did anything**
 24 **wrong. And that is what you said; correct?**

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1 MR. PREGON: Objection.
 2 A If you're listening carefully, then that's what
 3 you heard.
 4 BY MR. DICELLO:
 5 **Q And if the policies and procedures in fact said**
 6 **that the use of prone restraint is unacceptable and**
 7 **prohibited, that should have been something you considered**
 8 **in your investigation; true?**
 9 A Again, I didn't handle the policies and
 10 procedures. I looked at the actions of the officers from
 11 the criminal aspect of it.
 12 **Q Well, how are you evaluating the actions of the**
 13 **officers if you don't know what rules their conduct is**
 14 **governed by?**
 15 A I didn't know that that was a -- I didn't know
 16 that there was an executive order.
 17 **Q Okay.**
 18 A That's the best answer I can give you.
 19 **Q Fair enough.**
 20 **When you got to the jail, who did you report**
 21 **to?**
 22 A Well, I met with Sergeant Stevens.
 23 **Q Okay.**
 24 A She was still on the scene.

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1 **Q Anybody else that you remember?**
 2 A I met with also Sergeant Lewis, who was the
 3 jail supervisor at the time for that shift, I believe.
 4 **Q Yep.**
 5 A I think Captain Crosby was there. I don't know
 6 if he was there when I got there immediately, but that's
 7 probably who I would have checked into, at least to start
 8 with, based on what I -- my report, based on my
 9 information.
 10 **Q Have you ever been involved in situations where**
 11 **an independent outside agency is brought in to investigate**
 12 **the conduct of a corrections officer or a Montgomery**
 13 **County Sheriff's deputy?**
 14 A As far as conduct, I have conducted -- I have
 15 conducted outside -- for outside agencies. I've been
 16 involved in officer-involved shootings, okay, for other --
 17 **Q Let me break that down a little bit. There's**
 18 **been times where other agencies, other law enforcement**
 19 **agencies, have wanted to investigate a member of their own**
 20 **for shooting and killing a member of the public?**
 21 A Correct.
 22 **Q And they brought you in to try to maintain some**
 23 **independence in connection with that investigation;**
 24 **correct?**

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<p>1 A Yes.</p> <p>2 Q Have you ever been involved in any situation</p> <p>3 where the Montgomery County Sheriff's Office followed that</p> <p>4 same approach, where they brought in an independent</p> <p>5 outside agency to investigate the death of a member of the</p> <p>6 public?</p> <p>7 A Not that I'm aware of.</p> <p>8 Q Do you think that that was a good practice, the</p> <p>9 times that you were brought in as an outside agency not</p> <p>10 affiliated with the individual who was being investigated?</p> <p>11 Do you think that was a good practice to maintain</p> <p>12 independence in the investigation?</p> <p>13 A For when I was brought in?</p> <p>14 Q Yeah.</p> <p>15 A I think -- To say that it was proper, a lot of</p> <p>16 it has to do with the manpower involved. They were</p> <p>17 smaller agencies, not the size of the sheriff's office.</p> <p>18 The larger agencies within the Dayton area, based on my</p> <p>19 experience, the larger agencies take care of -- they</p> <p>20 investigate, they have their own ISU personnel, they have</p> <p>21 -- which is the Internal Affairs or Inspectional Services</p> <p>22 is what we call it. I worked -- I did my investigations</p> <p>23 for smaller departments, departments of ten to 15, 20</p> <p>24 officers. And --</p> <p style="text-align: right;">Page 38</p>	<p>1 Because I'm -- like I said, I'm not sure if he was</p> <p>2 actually there when I got there, which was about an hour</p> <p>3 after the -- after I was contacted. We were gone -- I was</p> <p>4 gone for the day. Our normal day of work would have been</p> <p>5 until 4:00. It was like 4:30 when I was contacted. So I</p> <p>6 had to get dressed, come back in, so on and so forth. So</p> <p>7 Captain Crosby was there, but he didn't brief me. I</p> <p>8 talked to Sergeant Lewis, which is common practice, you</p> <p>9 contact the first line supervisors for the most part. And</p> <p>10 then at that point in time, we started -- I knew that I</p> <p>11 was told that Mr. Richardson had already been removed to</p> <p>12 the coroner's office, the evidence technician was there</p> <p>13 photographing, and there were -- the inmates obviously</p> <p>14 were still there. So interviews began. Some of the</p> <p>15 interviews had already been done. Sergeant Stevens had</p> <p>16 done some of that. And then we just started -- I started</p> <p>17 the investigation based on what I had.</p> <p>18 Q Were you the lead investigator into</p> <p>19 Mr. Richardson's death?</p> <p>20 A The case was assigned to me, that is correct.</p> <p>21 Q And at the time that you started your</p> <p>22 investigation, what were the goals of the investigation?</p> <p>23 What questions was it intended to answer?</p> <p>24 A I wouldn't say they were goals. I would say</p> <p style="text-align: right;">Page 40</p>
<p>1 Q You're familiar with the practice, though?</p> <p>2 A Oh, yeah.</p> <p>3 Q In law enforcement, that to maintain an</p> <p>4 independent investigation, sometimes the Feds are brought</p> <p>5 in; right?</p> <p>6 A Sometimes.</p> <p>7 Q And sometimes jurisdiction or a law enforcement</p> <p>8 agency will go to a neighboring agency and bring in those</p> <p>9 people to investigate their own to maintain some</p> <p>10 appearance of independence; correct?</p> <p>11 A Appearance, true.</p> <p>12 Q Why wasn't that done in connection with</p> <p>13 Mr. Richardson's death?</p> <p>14 MR. PREGON: Objection.</p> <p>15 Go ahead.</p> <p>16 BY MR. DICELLO:</p> <p>17 Q If you know?</p> <p>18 A Above my pay grade. I have no idea.</p> <p>19 Q Okay.</p> <p>20 A Not our common practice, I will tell you that.</p> <p>21 Q Did Captain Crosby and Sergeant Lewis debrief</p> <p>22 you on kind of what happened before you started your</p> <p>23 investigation?</p> <p>24 A Captain Crosby did not. I do know that.</p> <p style="text-align: right;">Page 39</p>	<p>1 that we try to do a thorough investigation.</p> <p>2 Q And at the end of that investigation, is a</p> <p>3 decision made?</p> <p>4 A I don't know about always at the end. There's</p> <p>5 decisions made as you go through the process.</p> <p>6 Q I'm just trying to get an understanding of why</p> <p>7 are you investigating? What's the end game? What's the</p> <p>8 purpose of it?</p> <p>9 A The end game? To find out as much as we</p> <p>10 possibly can.</p> <p>11 Q For what purpose? To do what with it is what</p> <p>12 I'm trying to get at. I know you're gathering facts,</p> <p>13 you're interviewing people. But what is the next step</p> <p>14 with all this information you gather? Do you know?</p> <p>15 A I'm not really sure what -- I am -- We try to</p> <p>16 find out as much as we possibly can, put the case</p> <p>17 together, and determine what happened.</p> <p>18 Q Let me tell you where I'm coming from. If I</p> <p>19 held somebody down at my house for 22 minutes and they</p> <p>20 died, you would arrest me and you would investigate me for</p> <p>21 a homicide; true?</p> <p>22 MR. PREGON: Objection.</p> <p>23 A Based on -- We would have to look at the entire</p> <p>24 case.</p> <p style="text-align: right;">Page 41</p>

<p>1 BY MR. DICELLO:</p> <p>2 Q Yeah.</p> <p>3 A For me to sit here and tell you "I'm going to</p> <p>4 charge you and arrest you for homicide," I would be</p> <p>5 totally out of line. How can I -- I can't sit here today</p> <p>6 based on those facts and make that determination. I mean,</p> <p>7 that's not -- that's not my call. But based on, until a</p> <p>8 thorough investigation is complete. But we -- But there's</p> <p>9 a little -- No, go ahead. I'm sorry.</p> <p>10 Q That's all right. I'm just trying to get an</p> <p>11 understanding of why this investigation is performed and</p> <p>12 what's going to happen with it once it's done. Can you</p> <p>13 answer those questions?</p> <p>14 A If there's criminal activity that warrants it</p> <p>15 being sent to the Montgomery County Prosecutor, it is</p> <p>16 reviewed with the prosecutor's office.</p> <p>17 Q So was that the intention of your</p> <p>18 investigation, to determine whether or not this situation</p> <p>19 should be presented to the prosecutor, or was it just to</p> <p>20 find out what happened?</p> <p>21 A Well, that's always -- that's always an option.</p> <p>22 That's always an option, you know. If criminal activity</p> <p>23 is involved, then it is -- it is presented. If we have</p> <p>24 enough evidence to present to the prosecutor's office,</p> <p style="text-align: right;">Page 42</p>	<p>1 MR. PREGON: Can I have a continuing on that?</p> <p>2 MR. DICELLO: Is it relevance based?</p> <p>3 MR. PREGON: Yeah.</p> <p>4 MR. DICELLO: Yeah. Those objections are</p> <p>5 preserved. But go ahead.</p> <p>6 A Three or four.</p> <p>7 BY MR. DICELLO:</p> <p>8 Q Any of those stem from any deaths in the jail?</p> <p>9 A No.</p> <p>10 Q Any of those stem from any deaths at all?</p> <p>11 A No.</p> <p>12 Q I'm going to rely on your narrative report</p> <p>13 here. I've had the chance to depose Detective Conley. I</p> <p>14 think he assisted you in interviewing some people?</p> <p>15 A Yes.</p> <p>16 Q And Detective Conley told me he started</p> <p>17 interviewing people that night, May 19th, 2012, at the</p> <p>18 jail. Is that what you did?</p> <p>19 A Yes.</p> <p>20 Q And you told me you worked all day and then you</p> <p>21 had to come in and probably work a big part of the night;</p> <p>22 huh?</p> <p>23 A Yes. Well, I don't know.</p> <p>24 Q That was part of the job?</p> <p style="text-align: right;">Page 44</p>
<p>1 they make a determination, it goes before a grand jury,</p> <p>2 then they make a determination on charges.</p> <p>3 Q Have you ever been involved in an investigation</p> <p>4 where a fellow Montgomery County Sheriff's deputy or</p> <p>5 officer was ever indicted?</p> <p>6 A No.</p> <p>7 Q Have you ever been involved in an investigation</p> <p>8 where after your investigation you concluded I need to</p> <p>9 present this to the prosecutor for an indictment?</p> <p>10 A I have reviewed cases, yes, with the</p> <p>11 prosecutor's office.</p> <p>12 Q Against a fellow officer.</p> <p>13 A Oh, wow.</p> <p>14 MR. PREGON: I'll object.</p> <p>15 But go ahead.</p> <p>16 BY MR. DICELLO:</p> <p>17 Q Very few; true?</p> <p>18 A A few.</p> <p>19 Q And of those, no one has ever been indicted;</p> <p>20 correct?</p> <p>21 A Incorrect.</p> <p>22 Q How many fellow corrections officers or</p> <p>23 Montgomery County Sheriff's officers have been indicted as</p> <p>24 a result of an investigation you performed?</p> <p style="text-align: right;">Page 43</p>	<p>1 A It is, yeah.</p> <p>2 Q All right. So when you responded to the jail,</p> <p>3 did you know that you would be interviewing people about a</p> <p>4 death?</p> <p>5 A Yes.</p> <p>6 Q Did you bring any recording equipment to record</p> <p>7 the interviews of these people who witnessed this young</p> <p>8 man die?</p> <p>9 A No.</p> <p>10 Q Why not?</p> <p>11 A We don't record interviews.</p> <p>12 Q Why not?</p> <p>13 A It's just our policy. We don't record them.</p> <p>14 Q But if you recorded those interviews, we would</p> <p>15 know exactly what the witnesses said.</p> <p>16 A I generate a report.</p> <p>17 Q Did you write down word-for-word what every</p> <p>18 witness told you they saw? I mean, that's not possible,</p> <p>19 is it?</p> <p>20 A Two questions.</p> <p>21 Q Unless Whitney is there, you can't.</p> <p>22 A The answer is no. And no.</p> <p>23 Q So you're right. I asked a poor question.</p> <p>24 A Oh, no.</p> <p style="text-align: right;">Page 45</p>

<p>1 Q The first question was did you write down</p> <p>2 everything all the witnesses stated, and your answer was</p> <p>3 no?</p> <p>4 A No.</p> <p>5 Q And the second question is: Is it possible to</p> <p>6 write down everything a witness said when you interviewed</p> <p>7 them?</p> <p>8 A No.</p> <p>9 Q So we have to rely on the notes you took as</p> <p>10 writing down what you felt was important; correct?</p> <p>11 A That is correct.</p> <p>12 Q I presume you took notes of what people were</p> <p>13 telling you happened?</p> <p>14 A Yes.</p> <p>15 Q Did you keep those notes?</p> <p>16 A I don't believe so. And the reason, once my</p> <p>17 supplemental report is completed, the notes are destroyed.</p> <p>18 Q Why?</p> <p>19 A It's common practice.</p> <p>20 Q Why would you destroy your contemporaneous</p> <p>21 notes of what witnesses say they saw when you're</p> <p>22 investigating a death of a 28-year-old member of the</p> <p>23 public?</p> <p>24 A Because that's our common -- that's my common</p> <p style="text-align: right;">Page 46</p>	<p>1 A That's when the report was entered. Okay.</p> <p>2 BY MR. DICELLO:</p> <p>3 Q Help me out here.</p> <p>4 A I will. I'll explain to you how we do our</p> <p>5 reports --</p> <p>6 Q Okay.</p> <p>7 A -- or how I did my report. The report, we have</p> <p>8 an overall system called the Tiburon system, okay? All</p> <p>9 offense reports, all reports go through that system. When</p> <p>10 that is done, the original is made, it's entered, we start</p> <p>11 a report. From that point forward, supplemental reports</p> <p>12 are done and added to it. My supplement was number five,</p> <p>13 okay?</p> <p>14 Q Yep.</p> <p>15 A Now, I can't tell you the date that I started</p> <p>16 my report, because I started my report on Word, okay? The</p> <p>17 reason that we do that is because the entire department or</p> <p>18 anybody that has the opportunity can pull this report up</p> <p>19 and review where the investigation is, okay? So</p> <p>20 therefore, as a safeguard, for my supplemental report, I</p> <p>21 put it on Word. And then as things progress, which again</p> <p>22 I added to that different dates such as with the death</p> <p>23 certificate, which was in June 7th of '12, and then on the</p> <p>24 26th of June, Dr. Casto sent me a copy of the postmortem</p> <p style="text-align: right;">Page 48</p>
<p>1 practice. Once I generate a report, the notes are no</p> <p>2 longer needed. The case was closed.</p> <p>3 Q By looking at the report -- And I think yours</p> <p>4 is at MC 1271 in Plaintiff's Exhibit 1 there, Mike.</p> <p>5 MR. PREGON: It's at the bottom corner.</p> <p>6 BY MR. DICELLO:</p> <p>7 Q Yeah, there's some numbers, Bates numbers at</p> <p>8 the bottom there.</p> <p>9 A There it is. Okay.</p> <p>10 Q Based on looking at this, can you tell me when</p> <p>11 you completed this narrative Investigative Supplemental</p> <p>12 Report?</p> <p>13 A When it was completed? Well, on the date it</p> <p>14 says, 9-6 of '12 down at the bottom, where my name is.</p> <p>15 Q Well, that says the date it was printed?</p> <p>16 A Printed, correct.</p> <p>17 Q I want to know the date that you completed</p> <p>18 this. When did you type it into the computer? And I</p> <p>19 think that looks to be September 5th, 2012 at 7:45 a.m.</p> <p>20 A I'm looking at -- Which one are you looking at?</p> <p>21 MR. PREGON: Look at the first page.</p> <p>22 BY MR. DICELLO:</p> <p>23 Q Yeah, the first page.</p> <p>24 MR. PREGON: Right there.</p> <p style="text-align: right;">Page 47</p>	<p>1 examination. So it is as -- it's an ongoing report. I</p> <p>2 will start, I will put my -- and then I will add to. Then</p> <p>3 when the report is completed, it's then at that point in</p> <p>4 time that I generate the supplement in the Tiburon. It</p> <p>5 doesn't mean my report, I haven't been typing it and</p> <p>6 staying on top of it, it just means that I, on that day,</p> <p>7 September 5th, I generated and started supplement number</p> <p>8 five in the Tiburon system.</p> <p>9 Q Okay.</p> <p>10 A So --</p> <p>11 Q So do you keep a copy of your Word reports?</p> <p>12 A No. It's cut and pasted and sent over. I</p> <p>13 review it prior to approving it, it's been -- once it's</p> <p>14 approved by me, it's then an approved by the supervisor,</p> <p>15 which I believe would have been Sergeant Hutchinson, was</p> <p>16 my supervisor at the time, and --</p> <p>17 Q What happens to the Word version of your</p> <p>18 reports?</p> <p>19 A It's deleted. Because it's the same report.</p> <p>20 It's cut and pasted.</p> <p>21 Q Now, between June 26th of 2012 and</p> <p>22 September 5th of 2012, was there any documentation of you</p> <p>23 having done anything on this investigation?</p> <p>24 A Is there any documentation? No.</p> <p style="text-align: right;">Page 49</p>

<p>1 Q Based on reviewing your report, did you do</p> <p>2 anything between June 26th, 2012 and September 5th?</p> <p>3 A During -- I know that after June 26th there was</p> <p>4 some additional testing based on the supplement by --</p> <p>5 after we received the toxicology report. There was some</p> <p>6 additional testing don't by Dr. Marinetti, which went to</p> <p>7 the level of THC in Mr. Richardson's body. So when that</p> <p>8 was completed, and I got that result, sometime in that</p> <p>9 point, that's when I -- I put that in the report. And</p> <p>10 then ultimately I completed and entered it, what was it,</p> <p>11 September something.</p> <p>12 Q Okay. Bear with me just a moment.</p> <p>13 It sounds to me like you interviewed -- Did you</p> <p>14 interview the people in the order as they're listed in</p> <p>15 your report, meaning the first person you interviewed, was</p> <p>16 that Mr. Maxwell?</p> <p>17 A I know that that was the first inmate that I</p> <p>18 interviewed.</p> <p>19 Q All right.</p> <p>20 A Yes.</p> <p>21 Q And Mr. Maxwell, as you've already told us, he</p> <p>22 described what he perceived as looked like Mr. Richardson</p> <p>23 was having a seizure inside the cell, correct, went into</p> <p>24 seizure mode like you said?</p> <p style="text-align: right;">Page 50</p>	<p>1 you, Gary Edmond, you interviewed him and he told you he</p> <p>2 could hear Mr. Richardson saying, "Let me up, let me up";</p> <p>3 correct?</p> <p>4 A That is correct.</p> <p>5 Q Also, Billy Carpenter told you that he observed</p> <p>6 Mr. Richardson being pinned down by four, five or six</p> <p>7 corrections officers and putting handcuffs on</p> <p>8 Mr. Richardson; correct?</p> <p>9 A That is correct.</p> <p>10 Q Mr. Carpenter told you he heard Mr. Richardson</p> <p>11 yell several times, "Let me up"; correct?</p> <p>12 A Correct.</p> <p>13 Q Mr. Lewis, you interviewed him, and he said he</p> <p>14 didn't see anything -- well, actually he said he was</p> <p>15 trying to watch it on the reflection of the TV screen, but</p> <p>16 he did hear someone saying, "Get off of me, get off of</p> <p>17 me"; correct?</p> <p>18 A Yes.</p> <p>19 Q You interviewed Mr. Kylon Lorenzo, and he told</p> <p>20 you he heard someone saying, "Please stop, please stop";</p> <p>21 correct?</p> <p>22 A Yes.</p> <p>23 Q You interviewed Mr. Gage Hurlburt, and among</p> <p>24 other things -- I'm sorry, you interviewed Mr. Jessie</p> <p style="text-align: right;">Page 52</p>
<p>1 A Seizure mode, yes, that's how he described it</p> <p>2 to me. And that's the reason, I believe, I don't see it</p> <p>3 right here, because I probably have it out of order, I</p> <p>4 think I had that in quotations, if I'm not mistaken.</p> <p>5 Q Yeah, "seizure mode."</p> <p>6 A Okay.</p> <p>7 Q According to Mr. Maxwell, Mr. Richardson was</p> <p>8 moving and saying, "Get off of me," but he was not aware</p> <p>9 of what was going on. Is that what Mr. Maxwell told you?</p> <p>10 A He told me -- Okay. You said that he said "Get</p> <p>11 off of me," not aware of his circumstances. That was --</p> <p>12 Yeah. He told me that he kind of went out, did the</p> <p>13 seizure mode, then he woke -- when he kind of like woke up</p> <p>14 or came to, whatever, he had a blank stare and wasn't --</p> <p>15 didn't appear to be understanding where he was at.</p> <p>16 Q Yeah.</p> <p>17 A Okay.</p> <p>18 Q Mr. Maxwell told you, among other things, he</p> <p>19 said the COs kept the deceased on his stomach restraining</p> <p>20 him in handcuffs behind his back. That's what Mr. Maxwell</p> <p>21 told you?</p> <p>22 A That's exactly -- That's what I have in my</p> <p>23 report, yes.</p> <p>24 Q And some of the things the other inmates told</p> <p style="text-align: right;">Page 51</p>	<p>1 Hubbs at the third page of your report, and he told you,</p> <p>2 among other things, that Mr. Richardson was pulled out of</p> <p>3 his cell and was being held down on the ground; correct?</p> <p>4 A Yes.</p> <p>5 Q You interviewed Mr. Brandon Webb, and he stated</p> <p>6 that he observed officers holding someone down; correct?</p> <p>7 A Yes.</p> <p>8 Q You interviewed Mr. Morris, and he said he</p> <p>9 heard corrections officers telling Mr. Richardson to stay</p> <p>10 down on the ground; correct?</p> <p>11 A Yes.</p> <p>12 Q You interviewed Mr. Sowards, and he said he</p> <p>13 heard someone yelling "Get off of me" approximately six</p> <p>14 times and he heard some moaning and groaning, that's some</p> <p>15 information you had in your investigation; correct?</p> <p>16 A Yes.</p> <p>17 Q You interviewed Mr. Scott Reynolds, and</p> <p>18 Mr. Reynolds told you, among other things, that</p> <p>19 Mr. Richardson continued to be held facedown, but he was</p> <p>20 saying, "Let me up, I can't breathe"; correct?</p> <p>21 A Yes.</p> <p>22 Q And you reviewed the video as well; true?</p> <p>23 A Yes.</p> <p>24 Q And do we agree that at times -- Well, we agree</p> <p style="text-align: right;">Page 53</p>

<p>1 Mr. Richardson is handcuffed behind his back?</p> <p>2 A I will tell you this. I watched the video</p> <p>3 within the first five to six days of the incident. I do</p> <p>4 know that he was handcuffed or restrained. For me to sit</p> <p>5 here and say we agree -- I know that he was restrained, I</p> <p>6 know that he was handcuffed, and based on all the</p> <p>7 witnesses, they tell me he was handcuffed behind his back.</p> <p>8 Q Do you have any reason to question that?</p> <p>9 A I don't.</p> <p>10 Q Okay.</p> <p>11 A But I haven't reviewed the video in almost</p> <p>12 three years.</p> <p>13 Q All right. Did you also understand -- Well,</p> <p>14 based on your review of the video, Mr. Richardson was</p> <p>15 facedown on the ground; correct?</p> <p>16 A Yes.</p> <p>17 Q Let me ask a follow-up question. Do you</p> <p>18 remember at times Mr. Richardson appeared to be rolled</p> <p>19 onto his right side?</p> <p>20 A He was moved, absolutely, yes, uh-huh.</p> <p>21 Q And then there were other times when</p> <p>22 Mr. Richardson was lying facedown on the ground; correct?</p> <p>23 A Yes.</p> <p>24 Q With both his shoulders on the ground and his</p> <p style="text-align: right;">Page 54</p>	<p>1 Q Is it your understanding that during that</p> <p>2 entire time Mr. Richardson was on the ground?</p> <p>3 A He never got up to his feet, that is correct.</p> <p>4 Q Is it your understanding that he was trying to</p> <p>5 get up?</p> <p>6 A I can't say that.</p> <p>7 Q You didn't investigate this to try to determine</p> <p>8 whether or not Mr. Richardson was held in prone restraint,</p> <p>9 did you?</p> <p>10 A No.</p> <p>11 Q Do you know if anyone up to this day has ever</p> <p>12 investigated this situation to determine whether or not</p> <p>13 Mr. Richardson was held in prone restraint?</p> <p>14 A I do not.</p> <p>15 Q You didn't do that; correct?</p> <p>16 A Not specifically, no.</p> <p>17 Q And you're not aware of anyone else who did;</p> <p>18 true?</p> <p>19 A That is correct.</p> <p>20 Q So no one has done that yet. Fair to say the</p> <p>21 jury will be the first people who evaluate whether or not</p> <p>22 Mr. Richardson was held in prone restraint?</p> <p>23 MR. PREGON: Objection.</p> <p>24 Go ahead.</p> <p style="text-align: right;">Page 56</p>
<p>1 head turned to the left; correct?</p> <p>2 A I can't -- I -- I don't recall that. I -- I</p> <p>3 know he was down. And I know that there was struggling</p> <p>4 going on and there were officers trying to -- I shouldn't</p> <p>5 -- that they were working with him. Whether they were</p> <p>6 controlling him, trying to make sure that he didn't hurt</p> <p>7 himself or any of them.</p> <p>8 Q Well, folks --</p> <p>9 A There was a struggle.</p> <p>10 Q You knew there was a struggle; correct?</p> <p>11 A Correct.</p> <p>12 Q And this struggle lasted an extended period of</p> <p>13 time; correct?</p> <p>14 MR. PREGON: Objection.</p> <p>15 Go ahead.</p> <p>16 A It was not a short time. I mean, extended, I</p> <p>17 -- I didn't put a clock on it.</p> <p>18 BY MR. DICELLO:</p> <p>19 Q I'll represent to you that the video shows from</p> <p>20 the time that Mr. Richardson is being pulled out of his</p> <p>21 cell until the time the officers notice that he stopped</p> <p>22 breathing is about 22 minutes. Is that consistent with</p> <p>23 your memory?</p> <p>24 A Okay.</p> <p style="text-align: right;">Page 55</p>	<p>1 A I can't say -- Again, I'm not aware, so</p> <p>2 therefore I don't know.</p> <p>3 BY MR. DICELLO:</p> <p>4 Q Do you know if he was held in prone restraint,</p> <p>5 Mr. Richardson?</p> <p>6 A I haven't seen the video.</p> <p>7 Q In a long time.</p> <p>8 A And I have not -- And I have not seen what the</p> <p>9 definition of prone restraint is defined by I guess you</p> <p>10 said an executive order.</p> <p>11 Q At the time you investigated this, did you know</p> <p>12 how prone restraint was defined by Ohio law?</p> <p>13 A No.</p> <p>14 Q Did you know how prone restraint was defined by</p> <p>15 the Ohio Department of Rehabilitation and Correction?</p> <p>16 A No.</p> <p>17 Q Did you know how prone restraint was treated</p> <p>18 within the policies and procedures of the Montgomery</p> <p>19 County Sheriff's Department?</p> <p>20 A No.</p> <p>21 Q At any point in time during your investigation,</p> <p>22 did you ever review the jail operations manual?</p> <p>23 A No.</p> <p>24 Q So you didn't review the jail operations</p> <p style="text-align: right;">Page 57</p>

<p>1 manual's restraint policies at any time during this</p> <p>2 investigation; correct?</p> <p>3 A I don't.</p> <p>4 Q You didn't?</p> <p>5 A I didn't, and I don't. We have our -- It's an</p> <p>6 independent investigation is conducted along with mine.</p> <p>7 And that is done by the Inspectional Services Unit.</p> <p>8 Q So do you know who was investigating whether or</p> <p>9 not the policies and procedures were followed?</p> <p>10 A I cannot tell you. Someone within our</p> <p>11 Inspectional Services, and I don't know who was assigned</p> <p>12 to that unit at that time.</p> <p>13 Q Is that SIU, or is this something different</p> <p>14 now?</p> <p>15 A No, it's Inspectional Services. It's like</p> <p>16 Internal Affairs. It's the same thing. It's just our --</p> <p>17 It's the -- It's the unit that investigates policies and</p> <p>18 procedures.</p> <p>19 (Exhibit No. 2 marked for identification.)</p> <p>20 BY MR. DICELLO:</p> <p>21 Q I'm handing you what's been marked as</p> <p>22 Plaintiff's Exhibit 2.</p> <p>23 MR. DICELLO: I might have a couple copies of</p> <p>24 these, guys, but maybe not. Oh, I've got copies for</p> <p style="text-align: right;">Page 58</p>	<p>1 Q When I hear the words "risk management review,"</p> <p>2 in my mind it sounds like somebody is performing an</p> <p>3 investigation to see whether or not the officers, the</p> <p>4 sheriff's office, has any liability. Is that how you read</p> <p>5 this?</p> <p>6 MR. PREGON: Objection.</p> <p>7 A I guess that would be your opinion --</p> <p>8 BY MR. DICELLO:</p> <p>9 Q Yeah.</p> <p>10 A -- of that word.</p> <p>11 Q I'm asking yours.</p> <p>12 A Well, I'm telling -- again, why it's entitled</p> <p>13 risk management, I don't know. I really don't.</p> <p>14 Q That's okay.</p> <p>15 A I understand what risk is.</p> <p>16 Q I appreciate that. Does the Montgomery County</p> <p>17 Sheriff's office have a risk management committee that you</p> <p>18 know of?</p> <p>19 A Not that I'm aware of.</p> <p>20 Q Is there a risk manager employed by the</p> <p>21 Montgomery County Sheriff's Office if you know?</p> <p>22 A Not that I'm aware of.</p> <p>23 Q If you turn to page 11 of this report, this is</p> <p>24 MC 1728. You see this is signed by the sheriff himself;</p> <p style="text-align: right;">Page 60</p>
<p>1 everybody.</p> <p>2 BY MR. DICELLO:</p> <p>3 Q Handing you what's been marked as Plaintiff's</p> <p>4 Exhibit 2, is this the Inspectional Services Unit that</p> <p>5 you're talking about?</p> <p>6 A Well, that's how this is entitled, that's</p> <p>7 correct.</p> <p>8 Q And this is a Risk Management Review Report.</p> <p>9 What does "risk management review" mean?</p> <p>10 A How this report is titled. I mean, it's -- it</p> <p>11 looks like it's by the Inspectional Services Unit.</p> <p>12 Q Right.</p> <p>13 A I don't review their reports.</p> <p>14 Q Let me ask you this as somebody who has</p> <p>15 investigated jail deaths: Why would the investigation</p> <p>16 into the death of a member of the public in the jail be</p> <p>17 entitled a risk management review?</p> <p>18 A I don't know. But I do know that any time,</p> <p>19 whether it's suicide, any type of a death in the county</p> <p>20 jail, Inspectional Services conducts an investigation as</p> <p>21 well.</p> <p>22 Q Is that investigation a risk management review?</p> <p>23 A I can't tell you how they've been titled. This</p> <p>24 is the first one I've ever reviewed or seen.</p> <p style="text-align: right;">Page 59</p>	<p>1 correct?</p> <p>2 A That's correct.</p> <p>3 Q And it's signed by somebody named Sergeant Tom</p> <p>4 Flanders; correct?</p> <p>5 A That is correct.</p> <p>6 Q Is it your understanding then that Sergeant Tom</p> <p>7 Flanders performed this risk management review?</p> <p>8 A He signed off on it.</p> <p>9 Q Do you know that Sergeant Flanders has been</p> <p>10 terminated from the Montgomery County Sheriff's office for</p> <p>11 engaging in racist text messages?</p> <p>12 MR. PREGON: Objection.</p> <p>13 Continuing objection?</p> <p>14 MR. DICELLO: You've got it.</p> <p>15 MR. PREGON: Go ahead.</p> <p>16 A He was terminated, and I know the allegations,</p> <p>17 there were text messages.</p> <p>18 BY MR. DICELLO:</p> <p>19 Q Do you know what the substance of those text</p> <p>20 messages were, Mike?</p> <p>21 A I don't.</p> <p>22 Q You don't?</p> <p>23 A I don't. The specifics of them.</p> <p>24 Q Assuming that those text messages used the</p> <p style="text-align: right;">Page 61</p>

<p>1 word, and forgive me, okay, but used the word "nigger" --</p> <p>2 A Yes.</p> <p>3 Q -- we agree Sergeant Flanders has no business</p> <p>4 investigating the death of a black man in a jail, does he?</p> <p>5 MR. PREGON: Objection.</p> <p>6 A Not my call.</p> <p>7 BY MR. DICELLO:</p> <p>8 Q I'm asking you as a man.</p> <p>9 A That is inappropriate, absolutely.</p> <p>10 Q Robert Richardson's family members deserved</p> <p>11 better; agreed?</p> <p>12 MR. PREGON: Objection.</p> <p>13 A Deserved better as far as?</p> <p>14 BY MR. DICELLO:</p> <p>15 Q Than having Sergeant Tom Flanders investigate,</p> <p>16 perform a risk management review investigation into their</p> <p>17 son's death.</p> <p>18 MR. PREGON: Objection.</p> <p>19 Go ahead.</p> <p>20 BY MR. DICELLO:</p> <p>21 Q You know he's black; right? You understand?</p> <p>22 A Well, absolutely.</p> <p>23 Q And Sergeant Flanders is white?</p> <p>24 A Yes.</p> <p style="text-align: right;">Page 62</p>	<p>1 Sheriff Plummer terminated him. He was a captain at that</p> <p>2 time.</p> <p>3 So based on that, Sheriff Plummer felt that he</p> <p>4 was inappropriate and not the person to be working as a</p> <p>5 captain on his department. But as far as his ability to</p> <p>6 conduct the investigation in May of 2012, I can't tell you</p> <p>7 that.</p> <p>8 BY MR. DICELLO:</p> <p>9 Q Do you agree that Mr. Richardson's family, and</p> <p>10 Mr. Richardson himself, were entitled to an unbiased</p> <p>11 investigation?</p> <p>12 A Everybody --</p> <p>13 MR. PREGON: Objection.</p> <p>14 A That is correct. And that's -- that was my</p> <p>15 goal and has been for -- and was for 38 years.</p> <p>16 BY MR. DICELLO:</p> <p>17 Q Did you investigate at all how it was that</p> <p>18 Mr. Richardson had the level of marijuana in his system</p> <p>19 that was found?</p> <p>20 A No.</p> <p>21 Q Based on -- it sounds to me like based on your</p> <p>22 discussions with Dr. Marinetti, Dr. Marinetti opined to</p> <p>23 you that Mr. Richardson ingested marijuana sometime within</p> <p>24 six hours of his death?</p> <p style="text-align: right;">Page 64</p>
<p>1 Q So my question is: Do you think that</p> <p>2 Mr. Richardson's mother and his family deserve better than</p> <p>3 to have Sergeant Flanders perform this risk management</p> <p>4 review into his death?</p> <p>5 MR. PREGON: Objection.</p> <p>6 Go ahead.</p> <p>7 A The --</p> <p>8 BY MR. DICELLO:</p> <p>9 Q This is the part where you get to tell us how</p> <p>10 you feel about it.</p> <p>11 A About what?</p> <p>12 Q About Sergeant Tom Flanders performing this</p> <p>13 investigation based on the information you understand</p> <p>14 concerning his texts.</p> <p>15 MR. PREGON: Objection.</p> <p>16 Go ahead.</p> <p>17 A Well, to say -- to say -- to say whether or not</p> <p>18 Tom Flanders on -- in 2012 was capable or had -- was a, in</p> <p>19 your term, racist, when he conducted this investigation</p> <p>20 and this Risk Management Review Report, I can't answer</p> <p>21 that. I don't know what his thoughts were, I don't know</p> <p>22 what his feelings were. I do know, because I was still</p> <p>23 employed when he was terminated, I do know what the</p> <p>24 allegations were. And I do know that sergeant -- or that</p> <p style="text-align: right;">Page 63</p>	<p>1 A That's what my report says and what she</p> <p>2 reported to me, yes.</p> <p>3 Q So if Dr. Marinetti is correct, and we'll have</p> <p>4 to ask the doctors about that, but assuming Dr. Marinetti</p> <p>5 was correct, did you do anything to investigate how it is</p> <p>6 that Mr. Richardson was -- had access to marijuana inside</p> <p>7 the jail?</p> <p>8 A How it -- No.</p> <p>9 Q Do you know if anybody has ever determined who</p> <p>10 gave him the marijuana inside the jail or --</p> <p>11 A No.</p> <p>12 Q Did you ask Dr. Marinetti if these results were</p> <p>13 consistent with him -- with Mr. Richardson having ingested</p> <p>14 marijuana prior to coming into the jail?</p> <p>15 A Well, based on the information she gave me,</p> <p>16 which you put in my report, six hours.</p> <p>17 Q Six hours.</p> <p>18 A And he had been in since the 17th, I believe --</p> <p>19 Q Right.</p> <p>20 A -- in the evening hours. Or I don't know when</p> <p>21 he was actually arrested. I know Mr. Maxwell said he was</p> <p>22 brought to the pod or the cell in the evening of 17th.</p> <p>23 Q You attended the autopsy; correct?</p> <p>24 A Yes.</p> <p style="text-align: right;">Page 65</p>

1 **Q** Is that standard practice?

2 A Yes.

3 **Q** Was anybody from Mr. Richardson's family

4 invited to attend the autopsy?

5 A No.

6 **Q** So why is it that you're given permission to

7 attend the autopsy and the family isn't?

8 A Because it's my --

9 MR. PREGON: Objection.

10 Go ahead.

11 A Because it's my investigation. Because I

12 wanted to see, and I go for all homicides and deaths to

13 determine -- to actually be able to see what the injuries

14 are, if any, and whatever the doctor found.

15 BY MR. DICELLO:

16 **Q** Were you ever interviewed by anybody from

17 Internal Affairs?

18 A No.

19 **Q** Were you ever interviewed by anybody who was

20 performing any other kind of investigations into this

21 death?

22 A No.

23 MR. PREGON: Are we at a good break point?

24 MR. DICELLO: Yeah, and I'm almost done. I'm

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1 very close to being done.

2 MR. PREGON: Okay, just a quick one.

3 MR. DICELLO: Yeah, sure.

4 (Discussion held off the record.)

5 BY MR. DICELLO:

6 **Q** We're just back from a short break, Mike. What

7 is your understanding as to why Mr. Richardson was

8 handcuffed; do you know?

9 A Do I know? No.

10 **Q** What was your understanding as to why

11 Mr. Richardson was placed in the position or positions

12 that he was placed in by the corrections officers; do you

13 know?

14 A The simple answer is no.

15 **Q** Looking at your report, and it appears to be

16 one, two, three -- three full pages.

17 A Okay.

18 **Q** Correct?

19 A Yes.

20 **Q** Did you generate any other documentation in

21 connection with your investigation other than what we're

22 look at in Exhibit 1 that is MC 1271 to MC 1274?

23 MR. PREGON: Him personally; right?

24 MR. DICELLO: Correct.

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1 A No.

2 BY MR. DICELLO:

3 **Q** There's an approving officer of number 138. Do

4 you know who that is?

5 A That is Sergeant Hutchinson.

6 **Q** Sergeant Hutchinson. Did Sergeant Hutchinson

7 work in the jail as of May of 2012?

8 A No, he did not.

9 **Q** What division or unit was --

10 A He was my direct supervisor.

11 **Q** In Special Investigations?

12 A Special Investigations. Sergeant Stevens

13 called me in, because she -- I don't know where Hutch was,

14 I don't know if he was off that day, I don't recall. I

15 don't know if he was not available, I don't know.

16 **Q** So you told me you entered this report into the

17 Tiburon system, and then apparently, was it Sergeant

18 Hutchinson?

19 A Yes.

20 **Q** Sergeant Hutchinson becomes aware of it through

21 the computer somehow. Is that how it works?

22 A Yes.

23 **Q** And it looks like Sergeant Hutchinson approved

24 this report on September 6th, 2012, the day after it was

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1 entered; fair?

2 A Correct.

3 **Q** What happened after that, if anything, in

4 connection with this investigation that you either

5 participated in or knew took place?

6 A I conducted no further investigations on it.

7 **Q** Did you have any discussions with anybody where

8 there was some kind of meeting to come to any decisions

9 about the investigation?

10 A I don't recall having any.

11 **Q** So is it fair to say that the last involvement

12 you recall in connection with this investigation is when

13 you entered this report into the Tiburon system on your

14 computer on September 5th, 2012?

15 A That is correct.

16 **Q** And you had no other further involvement?

17 A I don't recall any further.

18 **Q** Did anybody ever come and report to you the

19 outcome of anything involving Mr. Richardson after you

20 entered this information into Tiburon?

21 A No.

22 **Q** What was your understanding as to the status of

23 the investigation as of the point that you entered this?

24 A Well --

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<p>1 Q I mean, it says on page three, it says "status</p> <p>2 closed."</p> <p>3 A Closed. The case was closed.</p> <p>4 Q Who closed it, you?</p> <p>5 A Yes.</p> <p>6 Q I just want to review my notes. And I was</p> <p>7 doing that while you were out, see if I have anything else</p> <p>8 for you.</p> <p>9 MR. DICELLO: Carrie, do you have any</p> <p>10 questions?</p> <p>11 MS. STARTS: No.</p> <p>12 MR. DICELLO: All right.</p> <p>13 BY MR. DICELLO:</p> <p>14 Q Did you interview the officers?</p> <p>15 A I did not.</p> <p>16 Q Did anyone?</p> <p>17 A Not that I'm aware of.</p> <p>18 Q Why not?</p> <p>19 A Their report stands on what they -- what they</p> <p>20 documented. If there was follow-up investigation, it</p> <p>21 would have been done based on what we observed. Their</p> <p>22 actions were observed on the video, okay? So therefore,</p> <p>23 nothing came to light that showed a necessity to interview</p> <p>24 them.</p> <p style="text-align: right;">Page 70</p>	<p>1 said, "Well, the officers completed narrative reports."</p> <p>2 So I sense from your answer that there was no need to</p> <p>3 interview because they completed a narrative report.</p> <p>4 Well, so did all the medical people that were interviewed.</p> <p>5 So why were they interviewed even though they filled out</p> <p>6 reports and the officers weren't?</p> <p>7 A My practice -- I can't tell you why Detective</p> <p>8 Conley interviewed the medical staff, okay? I interviewed</p> <p>9 Boehringer because he was the first medic on the scene, I</p> <p>10 believe, and he helped with the CPR. I was looking to see</p> <p>11 whether or not -- what he observed, so that I would have a</p> <p>12 better understanding from Mr. Richardson's actions,</p> <p>13 because I was going to the autopsy report, the autopsy the</p> <p>14 next morning. So if there was something there that he saw</p> <p>15 in Mr. Richardson's actions, I could report that to</p> <p>16 Dr. Casto.</p> <p>17 Q Okay.</p> <p>18 A So therefore, it could be something that would</p> <p>19 aid him upon conducting the autopsy. And that has a lot</p> <p>20 to do with why we go to autopsies, okay? We have -- That</p> <p>21 way we can see with our eyes, prior to the report --</p> <p>22 Because the report takes six to eight weeks to be</p> <p>23 completed. He can call me on the phone. But if we have</p> <p>24 conversation standing there -- And that's the reason I --</p> <p style="text-align: right;">Page 72</p>
<p>1 Q Some of the medical folks, they completed the</p> <p>2 same kind of reports as the corrections officers; correct?</p> <p>3 A Yes. It's all part of the jail incident</p> <p>4 report.</p> <p>5 Q But the medical personnel were interviewed by</p> <p>6 Detective Conley; true?</p> <p>7 A Oh, I interviewed --</p> <p>8 Q You interviewed?</p> <p>9 A -- Boehringer.</p> <p>10 Q You interviewed Boehringer. And we just had</p> <p>11 Detective Conley in here, and Detective Conley told me,</p> <p>12 his report is just before yours, Detective Conley</p> <p>13 interviewed Medic Stockhauser, LPN Kassandra Miles,</p> <p>14 interviewed LPN Kristy Kruse, interviewed Nurse Felicia</p> <p>15 Foster; correct?</p> <p>16 A Yes.</p> <p>17 Q Those folks all filled out narratives in the</p> <p>18 incident report just like the corrections officers;</p> <p>19 correct?</p> <p>20 A Correct.</p> <p>21 Q So why were they interviewed by the sheriff's</p> <p>22 office folks who were investigating this death and the</p> <p>23 officers were not interviewed? The reason I'm asking is</p> <p>24 because I asked you this question once before and you</p> <p style="text-align: right;">Page 71</p>	<p>1 I specifically interviewed -- is it Mr. Boehringer?</p> <p>2 Q Boehringer.</p> <p>3 A Boehringer, yeah.</p> <p>4 Q But as far as why Detective Conley interviewed</p> <p>5 all the medical personnel, even though they had filled out</p> <p>6 the same reports that the COs filled out, you don't know</p> <p>7 why that was done?</p> <p>8 A I don't.</p> <p>9 Q You understand there's an appearance that the</p> <p>10 officers are purposefully not being interviewed about what</p> <p>11 happened?</p> <p>12 MR. PREGON: Objection.</p> <p>13 A Well, whatever the appearance is, we also have</p> <p>14 their report and we also have the video.</p> <p>15 BY MR. DICELLO:</p> <p>16 Q Did you provide the video to the coroner?</p> <p>17 A I honestly can tell you I don't know. In a lot</p> <p>18 of -- and I can't -- Well, I don't have it reported, so I</p> <p>19 can't tell you.</p> <p>20 Q As of the time that you met with the coroner</p> <p>21 when he was conducting the autopsy, did you know whether</p> <p>22 or not the coroner had seen the video?</p> <p>23 A No. Because the only time that I met was the</p> <p>24 next day. The autopsy was performed the next morning.</p> <p style="text-align: right;">Page 73</p>

1 **Q** Yeah.

2 A I don't even think I had the video at that

3 point.

4 **Q** Were you investigating Mr. Richardson's

5 actions?

6 A We look at the entire, everyone's actions.

7 **Q** Did you come to any conclusions that

8 Mr. Richardson committed any crimes?

9 A Crimes? No.

10 **Q** Did you come to any conclusions that

11 Mr. Richardson violated any jail rules?

12 A No.

13 **Q** Did Mr. Richardson, based on your

14 investigation, hurt anybody?

15 A Hurt anybody? No.

16 **Q** Did he try to hurt anybody?

17 A I know there was a cooperation issue.

18 **Q** Do you know --

19 A There was a re -- Based on what I saw, based on

20 what was reported, complying with commands, complying with

21 what he was told to do was not done.

22 **Q** Do you know if he was capable of complying with

23 the commands?

24 A That, I do not know.

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1 **Q** Do you have reason to believe, based on your

2 investigation, that he wasn't?

3 A To believe? I know that Mr. Maxwell said -- of

4 what he said when I interviewed him. But to what point --

5 I do know based on what other inmates said and what he

6 even said, he was coherent enough to tell the officers to

7 "Get off of me." He was -- And he was heard making those

8 statements.

9 **Q** Okay.

10 A So therefore, there was a certain amount of

11 being coherent to understand what was going on.

12 **Q** I'm not sure I got an answer. But based on

13 your investigation, did Mr. Richardson try to hurt anyone?

14 A Not that I saw.

15 **Q** Based on your investigation, and what you

16 viewed on the video, did Mr. Richardson pose an immediate

17 threat to anyone?

18 A I don't know.

19 **Q** You actually got to -- had access to some

20 specific information about Mr. Richardson based on you

21 attending the autopsy. Mr. Richardson was obese; correct?

22 A Yes.

23 **Q** He had pre-existing heart disease; correct?

24 A That's what I was told, yes.

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1 **Q** He had an enlarged heart; true?

2 A Yes.

3 **Q** Based on what you observed, Mr. Richardson had

4 participated in a struggle with corrections officers;

5 correct?

6 A Yes.

7 **Q** Based on what you observed, the corrections

8 officers used force against Mr. Richardson; true?

9 A Force was used, yes.

10 **Q** As of 2012, Mike, were you familiar with a

11 general rule in law enforcement that once somebody is

12 handcuffed behind their back in a prone position that you

13 need to get that person off their belly as soon as

14 possible?

15 MR. PREGON: Objection.

16 Go ahead.

17 A It's not quite as simple as that. But you

18 would want them moved, yes.

19 BY MR. DICELLO:

20 **Q** And why is it that you would want them moved

21 off their belly as soon as possible when their hands are

22 cuffed behind their back?

23 A If you can do that safely with them complying,

24 you can do that.

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1 **Q** But my question is: Why do you want to do it

2 as soon as possible? Why do you want to get them off

3 their belly when their hands are cuffed behind their back?

4 A So nothing further occurs; injuries, things of

5 that nature.

6 **Q** As of May of 2012, were you familiar with the

7 risk of death by positional asphyxiation?

8 A I can't say that I specifically had that term.

9 Obviously, I'm aware of it now. But to specifically say

10 that, I can't -- I can't tell you that -- The answer was

11 was I aware of it? No.

12 **Q** Back in May of 2012, were you aware of an

13 increased risk of somebody dying from being positioned on

14 their belly with their hands cuffed behind their back?

15 A The issue is whether you can breathe or not,

16 and is always a danger.

17 **Q** My specific question -- And I agree with you.

18 My specific question is: Were you aware in your field, in

19 the law enforcement field, as of May of 2012, whether

20 there was an increased risk of death from being positioned

21 in a prone position with your hands cuffed behind your

22 back?

23 A My answer I guess would be yes.

24 **Q** You were aware of that?

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<p>1 A Aware of it? Aware that something could 2 happen, yes.</p> <p>3 Q As of May of 2012, were you aware of what the 4 risk factors are that are associated with an increased 5 risk of death in that position?</p> <p>6 A No.</p> <p>7 Q Did anything in your investigation lead you to 8 conclude that Mr. Richardson was armed at any time?</p> <p>9 A With physical weapons, he had his hands, he had 10 his legs, yes.</p> <p>11 Q Other than his hands --</p> <p>12 A Are you talking guns, knives?</p> <p>13 Q Yeah.</p> <p>14 A Clubs? He had -- Based on -- There was no 15 information that he had any.</p> <p>16 Q Did the coroner tell you when Mr. Richardson 17 had his heart attack?</p> <p>18 A No.</p> <p>19 Q Do you know when he had a heart attack?</p> <p>20 A No, I do not.</p> <p>21 Q Do you know if he had a heart attack?</p> <p>22 A Based on Dr. Casto's report is he had a cardiac 23 arrhythmia death. Now, what that terminology, that 24 definition means, I can't tell you. But that was based on</p> <p style="text-align: right;">Page 78</p>	<p>1 December 4, 2015</p> <p>2 Dear Mr. Clymer,</p> <p>3 You have chosen to read and sign your transcript. 4 Please do not mark on the transcript. Any 5 corrections/changes you may desire to make in your 6 testimony should be typewritten or printed on the errata 7 sheet at the end of testimony, giving the page number, 8 line number and desired correction/change. After you have 9 read the transcript, sign your name on the correction 10 sheet and where indicated at the close of testimony before 11 a notary public.</p> <p>12 The Rules of Civil Procedure allow thirty days for 13 you to read and sign. Please return the signature page 14 and errata sheet to Whitney Layne, 6723 Cooperstone Drive, 15 Dublin, Ohio 43017 within that time. Failure to do so in 16 the allotted time will result in your transcript being 17 used as though read and signed by you.</p> <p>18</p> <p>19 Sincerely,</p> <p>20 _____</p> <p>21 Whitney Layne 22 Professional Reporter</p> <p>23</p> <p>24 Cc: Nick DiCello Carrie Starts Jamey Pregon</p> <p style="text-align: right;">Page 80</p>
<p>1 the findings of Dr. Casto.</p> <p>2 Q Mike, those are all the questions I have for 3 you.</p> <p>4 A Okay.</p> <p>5 Q I appreciate your patience with me.</p> <p>6 A No problem.</p> <p>7 MR. PREGON: We'll read.</p> <p>8 - - -</p> <p>9 (Signature not waived.)</p> <p>10 - - -</p> <p>11 And, thereupon, the deposition was concluded at 12 4:45 p.m.</p> <p>13 - - -</p> <p style="text-align: right;">Page 79</p>	<p>1 State of _____</p> <p>2 County of _____</p> <p>3 I, JOHN MICHAEL CLYMER, do hereby certify that I 4 have read the foregoing transcript of my deposition given 5 on November 18, 2015; that together with the correction 6 page attached hereto noting changes in form or substance, 7 if any, it is true and correct.</p> <p>8 _____</p> <p>9 JOHN MICHAEL CLYMER</p> <p>10 I do hereby certify that the foregoing transcript 11 of the deposition of JOHN MICHAEL CLYMER was submitted to 12 the witness for reading and signing; that after he had 13 stated to the undersigned Notary Public that he had read 14 and examined his deposition, he signed the same in my 15 presence on the ____ day of _____, 2015.</p> <p>16 _____</p> <p>17 Notary Public</p> <p>18 My Commission Expires on _____</p> <p>19 - - -</p> <p style="text-align: right;">Page 81</p>

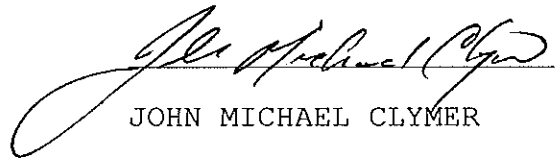
1 State of Ohio

2 County of Montgomery

3 I, JOHN MICHAEL CLYMER, do hereby certify that I
4 have read the foregoing transcript of my deposition given
5 on November 18, 2015; that together with the correction
6 page attached hereto noting changes in form or substance,
7 if any, it is true and correct.

8

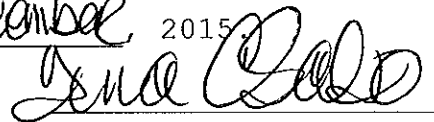
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JOHN MICHAEL CLYMER

10 I do hereby certify that the foregoing transcript
11 of the deposition of JOHN MICHAEL CLYMER was submitted to
12 the witness for reading and signing; that after he had
13 stated to the undersigned Notary Public that he had read
14 and examined his deposition, he signed the same in my
15 presence on the 9th day of December, 2015.

16

17



Notary Public

18 My Commission Expires on _____

19

20

21

22

23

24



TINA C. SABO
Notary Public, State of Ohio
My Comm. Expires April 27, 2016

1 TO THE REPORTER:

2 I have read the entire transcript of my deposition taken
 3 on the 5th day of December, 2015, or the same has been
 4 read to me. I request that the following changes be
 5 entered upon the record for the reasons indicated.

6

7 Page Line Correction and reason therefore

8

9

No changes -

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Date 12/9/15 Signature *[Handwritten Signature]*

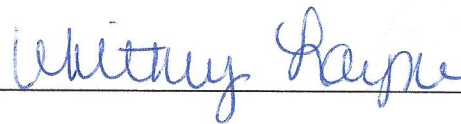
24

CERTIFICATE

State of Ohio :
County of Franklin:

I, Whitney Layne, Notary Public in and for the
State of Ohio, duly commissioned and qualified, certify
that the within named JOHN MICHAEL CLYMER was by me duly
sworn to testify to the whole truth in the cause
aforesaid; that the testimony was taken down by me in
stenotype in the presence of said witness; afterwards
transcribed upon a computer; that the foregoing is a true
and correct transcript of the testimony given by said
witness taken at the time and place in the foregoing
caption specified.

IN WITNESS WHEREOF, I have set my hand and
affixed my seal of office at Dublin, Ohio, on this 4th day
of Decemer, 2015.



Whitney Layne, Notary Public

In and for the State of Ohio

My Commission expires May 4, 2020

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